REMARKS

Claims 1-33 are pending in the present application. Reconsideration of the claims is respectfully requested.

I.   Application to be Considered Special

This application has received a **fourth non-final** Office Action after being withdrawn from appeal. As per MPEP § 707.02, Applicants respectfully request that the **Supervisory Patent Examiner** personally check on the pendency of this application and make every effort to terminate prosecution. It is apparent that no such effort was made after Applicants' previous request, since the grounds of rejection were withdrawn in favor of new grounds of rejection based on equally inapplicable prior art references. Applicants request the Examiner and the Examiner's Supervisory Patent Examiner call the undersigned at the below-listed telephone number to discuss a course of action that may result in termination of prosecution.

II.   35 U.S.C. § 103, Alleged Obviousness

The Office Action rejects claims 1-33 under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Herschkorn* (U.S. Patent No. 6,691,094 B1) in view of *Baldwin et al.* (U.S. Patent No. 6,310,952 B1). This rejection is respectfully traversed.

With reference to claims 1, 3, 7-9, and 11, the Office Action states:

> As per claims 1, 3, 7-9, and 11 Herschkorn substantially discloses a bank loan trading system/method to utilize an electronic facility to facilitate the trading of bank loans. Sellers (or service providers) and buyers enter offers and bids (or plurality of service providers or banks) that are posted to all potential buyers and sellers, unless the orders are undisclosed (which is readable as Applicant's claimed invention wherein said a method of providing service provider information (bank loans) to a client device in a distributed computer system) comprising: obtaining at least bids from a plurality of service providers for providing a service (see., abstract, col 4, lines 63-67, col 5, lines 1-8, lines 14-28, col 6, lines 5-16, col 10, lines 37-58, col 11, lines 25-67); providing the bids from the plurality of service providers (abstract, col 5, lines 1-8, lines 14-28, col 6, lines 5-16, col 10, lines 37-58, col 11, lines 25-67).

It is to be noted that Herschkorn fails to explicitly disclose an estimated time (or travel) completion for the service. However, Baldwin discloses a method/system for providing easy access to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid, for a queue (see., Baldwin, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the online bank loan trading system of Herschkorn by including the limitation detailed above as taught by Baldwin because such modification would provide automated access to service providers based upon an estimated amount of time.

Office Action, dated December 8, 2004. Applicants respectfully disagree. *Herschkorn* teaches a bank loan trading system that utilizes an electronic facility to facilitate trading of bank loans. Sellers and buyers enter offers and bids that are posted to all potential buyers and sellers. Applicants agree that *Herschkorn* teaches a plurality of sellers that offer a plurality of bids. In *Herschkorn*, a seller of a bank loan is an assignee of an existing loan that was previously established with a borrower based on particular terms; a buyer is a potential assignee that would like to take possession of the loan. Thus, *Herschkorn* establishes an electronic system through which bank loans may be traded as if they are securities.

Applicants also agree that *Herschkorn* does not teach or even suggest an estimated time of completion for the service. Simply put, a bank loan to be traded is not a time-based service. Hence, there is no teaching of determining an estimated time of completion for a service for each of a plurality of service providers in *Herschkorn*. There also is no suggestion to perform such a step in *Herschkorn*. A bank loan is likely to last years or even decades. There is no need whatsoever for determining a time of completion in *Herschkorn*.

Baldwin teaches a method and apparatus for providing access to an overly popular service provider. *Baldwin* teaches a queuing system that allows a caller to bid an amount of money to move up in the queue. See col. 2, lines 20-31. *Baldwin* also teaches a user interface system that informs the caller of an estimated amount of time before the caller will reach the top of the queue. See col. 4, lines 41-51. Therefore, *Baldwin* is not concerned with identifying a service provider. Rather, *Baldwin* is concerned with a time

auction system and method for consumers to bid against each other to gain access to a particular service provider. In *Baldwin*, the customer has already identified a single service provider before entering the queue for the service provider.

Baldwin teaches methods and systems for allowing customers to bid against each other for access to a single service provider. This is contrary to the present invention, which provides a method, apparatus, and program for allowing service providers to bid against each other based on an estimated time of completion of the service. In *Baldwin*, if a plurality of service providers were available, there would be no need to pit customers against one another for access to a single service provider.

More particularly, *Baldwin* teaches providing an estimated time the customer will be waiting in the queue; however, *Baldwin* does not teach determining an estimated time of completion of the service for each of the **plurality** of service providers. Furthermore, neither *Herschkorn* nor *Baldwin* teaches or suggests providing the bids from the plurality of service providers **and the estimated time of completion** for each of the plurality of service providers to a client device.

As stated in the Office Action, *Baldwin* clearly teaches informing a caller of an estimated amount of time before the caller will reach the top of the queue, which can only be interpreted as an estimated time of a **start** of a service and **not** an estimated time of **completion**. Somehow, the Office Action alleges this is equivalent to an estimated time of completion. However, the only motivation for interpreting the teachings of *Baldwin* in this manner is to reconstruct the present invention using the instant claims as a template. Therefore, Appellants maintain that *Baldwin* does not teach or fairly suggest "providing the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device," as recited in claim 1.

Furthermore, *Baldwin* clearly teaches allowing customers to bid against each other for access to a service provider, rather than allowing a plurality of service providers to bid for the right to provide a service to a single customer, as in the present invention. Therefore, *Baldwin* clearly does not teach or suggest providing the estimated time of completion for the service **for each of the plurality of service providers** to a client device, as alleged in the Office Action.

Applicants submit that *Herschkorn* cannot be properly combined with *Baldwin* because a telephone waiting queue is only operable for a plurality of customers and a single service provider. There is no teaching in *Herschkorn* that would allow a person of ordinary skill in the art to combine an electronic system for trading bank loans, as in *Herschkorn*, with customers waiting in a queue for a telephone-based service. A *prima facie* case of obviousness cannot be properly based upon prior art references if the prior art references requires some modification in order to meet the claimed invention and such a modification destroys the intended purpose or function of the disclosed invention in the reference.

In the present case, the Office Action proposes making multiple combinations and modifications to transform a multiple-customer/single-provider system into a multiple-buyer/multiple-seller system with no time-based service. A person of ordinary skill in the art would not have been motivated to make such a drastic transformation based on the applied prior art without *a priori* knowledge of Applicants' claimed invention. The Office Action may not use the claimed invention as an "instruction manual!" or "template" to piece together the teachings of the prior art so that the invention is rendered obvious. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). Such reliance is an impermissible use of hindsight with the benefit of applicants' disclosure. *Id.* Therefore, absent some teaching, suggestion, or incentive in the prior art, *Herschkorn* and *Baldwin* cannot be properly combined to form the claimed invention. As a result, absent any teaching, suggestion, or incentive from the prior art to make the proposed combination, the presently claimed invention can be reached only through an impermissible use of hindsight with the benefit of Applicants' disclosure a model for the needed changes.

The applied references, taken alone or in combination, fail to teach each and every claim limitation. Therefore, the proposed combination of *Herschkorn* and *Baldwin* fails to render claim 1 obvious. Claims 12 and 23 recite subject matter addressed above with respect to claim 1 and are allowable for the same reasons. Since claims 2-11, 13-22, and 24-33 depend from claims 1, 12, and 23, the same distinctions between *Herschkorn* and *Baldwin* and the invention recited in claims 1, 12, and 23 apply for these claims.

Additionally, claims 2-11, 13-22, and 24-33 recite other additional combinations of features not suggested by the reference.

More particularly, claim 5 recites:

5. The method of claim 1, wherein the each bid further includes an estimated time to perform the service at a location associated with a corresponding service provider.

Herschkorn and *Baldwin*, taken individually or in combination, fail to teach or suggest obtaining bids from a plurality of service providers, wherein each bid includes an estimated time to perform the service at a location associated with a corresponding service provider. With reference to claim 5, the Office Action states:

> As per claims 5 and 6, Herschkorn discloses the claimed method as stated in claims 1 and 4 above. It is to be noted that Herschkorn fails to explicitly disclose an estimated time (or travel) completion for the service. However, Baldwin discloses a method/system for providing easy access to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid, for a queue (see., Baldwin, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the online bank loan trading system of Herschkorn by including the limitation detail above because such modification would provide automated access to service providers based upon an estimated amount of time.

Office Action, dated December 8, 2004. Applicants respectfully disagree. As stated above, *Baldwin* clearly teaches informing a caller of an estimated amount of time before the caller will reach the top of the queue, which can only be interpreted as an estimated time of a **start** of a service and **not** an estimated time to **perform** the service. Somehow, the Office Action alleges this is equivalent to an estimated time of completion. Furthermore, the service provider in *Baldwin* does not submit a bid that includes this information. The customer is not able to select one service provider from a plurality of service providers based on this information. Rather, the customer in *Baldwin* has already selected a single service provider before entering the queue for that single service provider. Still further, *Baldwin* does not mention a location associated with a corresponding service provider. The only motivation for interpreting the teachings of

Baldwin in this manner is to reconstruct the present invention using the instant claims as a template. Therefore, Appellants maintain that *Baldwin* does not teach or fairly suggest "wherein the each bid further includes an estimated time to perform the service at a location associated with a corresponding service provider," as recited in claim 5. Claims 16 and 27 recite subject matter addressed above with respect to claim 5 and are allowable for similar reasons.

Furthermore, claims 6, 17, and 28 recite obtaining route information from a route determination provider based on a first location associated with the client device and a second location associated with a corresponding service provider. The Office Action fails to address this feature. *Herschkorn* teaches an online bank loan trading system. *Baldwin* teaches a telephone-based service provider. Clearly, there is no teaching or suggestion in either applied reference of a route determination provider.

The applied references fail to teach or suggest each and every claim limitation; therefore, the proposed combination of *Herschkorn* and *Baldwin* does not render claims 6, 17, and 28 obvious. Since claims 7, 8, 18, 19, 29, and 30 depend from claims 6, 17, and 28, the same distinctions between *Herschkorn* and *Baldwin* and the invention recited in claims 6, 17, and 28 apply for these claims.

Still further, claims 7, 18, and 29 recite obtaining historical travel data from a historical database. The Office Action fails to address this feature and, thus, fails to establish a *prima facie* case of obviousness for these claims. *Herschkorn* and *Baldwin*, taken alone or in combination, fail to teach or suggest obtaining historical travel data from a historical database. The applied references fail to teach or suggest each and every claim limitation; therefore, claims 7, 18, and 29 are not rendered obvious by the proposed combination of *Herschkorn* and *Baldwin*. Since claims 8, 19, and 30 depend from claims 7, 18, and 29, the same distinctions between *Herschkorn* and *Baldwin* and the invention recited in claims 7, 18, and 29 apply for these claims.

Therefore, Applicants respectfully request withdrawal of the rejection of claims 1-33 under 35 U.S.C. § 103.
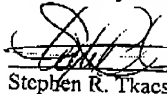
III. Conclusion

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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